**Mathews Ready Mix, Inc.** *and* **Bill Callaway** *and* **General Teamsters Local No. 137, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.** Cases 20–CA–15262 and 20–CA–15354

December 16, 1981

## DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

On June 18, 1981, Administrative Law Judge Leonard N. Cohen issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief and the General Counsel filed limited cross-exceptions.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings,[1] and conclusions of the Administrative Law Judge and to adopt his recommended Order as modified below.

The Administrative Law Judge found that Respondent discriminatorily transferred employee William Callaway from its Gridley facility to its Corning facility because of his union and other activities protected concerted activities and refused in a disparate fashion to allow Callaway to work 2 hours' overtime on a daily basis while assigned to the Corning facility to compensate him for travel expenses. Accordingly, he recommended that Respondent make Callaway whole for any loss of earnings, including overtime, suffered as a result of this discrimination.

The General Counsel excepts to this remedy contending that the Administrative Law Judge's finding that 2 hours' overtime on a daily basis as compensation for travel expenses is merely speculative, finding its genesis in Respondent's arrangement with Callaway's vacation replacement. The General Counsel contends that, since Callaway's transfer was discriminatorily motivated, Respondent should be required to make Callaway whole by paying him for both the time he spent traveling to and from the Corning facility and the actual expense of that travel. We agree, for it is clear that except for the discriminatory transfer to Corning Callaway would not have expended either the travel time or money. Accordingly, we shall amend the remedy as follows:

### AMENDED REMEDY

Having found that Respondent discriminatorily transferred William Callaway from the Gridley facility to the Corning plant on or about May 13, it is recommended that Respondent immediately transfer Callaway from the Corning facility to the Gridley facility and pay Callaway for the time he spent commuting to the Corning facility and reimburse him for all travel expenses incurred as a result of his transfer to that facility. Having further found that Respondent discriminatorily denied William Callaway the opportunity to work overtime while employed at the Gridley facility during the period of mid-February to on or about May 12, it is further recommended that Respondent make Callaway whole for any loss of earnings, including overtime, from mid-February 1980 to the date he is transferred back to the Gridley facility with such earnings to be computed within the meaning of and in accordance with the Board's Decision in *F. W. Woolworth Company*, 90 NLRB 289 (1950), with interest as set forth in *Florida Steel Corporation*, 231 NLRB 651 (1977).[2]

## ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, Mathews Ready Mix, Inc., Gridley, California, its officers, agents, successors, and assigns, shall take the action set forth in said recommended Order, as so modified:

1. Substitute the following for paragraph 2(b):

"(b) Make whole William Callaway for any loss of earnings and expenses including overtime and travel expenses suffered as a result of the discrimination against him in the manner set forth in the section of the Board's Decision and Order entitled 'Amended Remedy.'"

[1] Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

[2] See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962). In accordance with his dissent in *Olympic Medical Corporation*, 250 NLRB 146 (1980), Member Jenkins would award interest on the backpay due based on the formula set forth therein.

## APPENDIX

### NOTICE TO EMPLOYEES
### POSTED BY ORDER OF THE
### NATIONAL LABOR RELATIONS BOARD
### An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

WE WILL NOT interrogate our employees concerning their union activities, sympathies, and desires.

WE WILL NOT instruct our employees to furnish the National Labor Relations Board with written statements concerning the protected concerted activities of our employees.

WE WILL NOT inform our employees that we have denied overtime and transferred employees because of the employees having engaged in union activities or other protected concerted activities.

WE WILL NOT restrict our employees in their access to our offices and use of the telephone because of their having engaged in union activities or other protected concerted activities.

WE WILL NOT deny overtime to our employees because of their having engaged in union activities or other protected concerted activities.

WE WILL NOT transfer our employees from one facility to another facility because they engaged in union activities or other protected concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of their rights guaranteed them by Section 7 of the National Labor Relations Act.

WE WILL offer to William Callaway immediate transfer from the Corning facility to the Gridley facility in his former position or, if that position no longer exists, to a substantially equivalent position without prejudice to his seniority and to any other rights and privileges previously enjoyed. WE WILL make William Callaway whole for any loss of earnings or other benefits, including travel time, travel expenses, and overtime, suffered as a result of our discrimination against him, with interest thereon.

MATHEWS READY MIX, INC.

## DECISION

### STATEMENT OF THE CASE

LEONARD N. COHEN, Administrative Law Judge: This matter was heard before me in Oroville, California, on November 25, 1980.[1] On July 16, the Regional Director for Region 20 of the National Labor Relations Board issued an order consolidating cases and consolidated complaint and notice of hearing based on unfair labor practice charges filed on March 31 in Case 20-CA-15262 by Bill Callaway and on May 15 in Case 20-CA-15354 by General Teamsters Local No. 137, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, alleging violations of Section 8(a)(3) and (1) of the National Labor Relations Act, as amended, herein called the Act.

The consolidated complaint, as amended at hearing, alleges that between November 1979 and May 1980 Respondent, through several admitted supervisors and agents, committed various independent violations of Section 8(a)(1) including, *inter alia*, creating the impression of surveillance of its employees' union activities, soliciting letters of criticism from employees concerning the union and/or protected concerted activities of employee Callaway, threatening Callaway with reprimand and other economic reprisals for engaging in union and/or protected concerted activities, and informing employees that Callaway was restricted both in his movements and in the use of the telephone, and subsequently transferred to an isolated facility because he had engaged in union and/or other protected concerted activity. The consolidated amended complaint further alleges that Respondent violated Section 8(a)(3) by denying Callaway the opportunity to earn overtime, by discontinuing Callaway's reimbursement for travel expenses, and by transferring Callaway to an isolated facility in retaliation for his union and/or other protected concerted activities.

All parties have been afforded full opportunity to appear, to introduce evidence and to examine and cross-examine witnesses, to argue orally, and to file briefs. Counsel for the General Counsel and Respondent filed briefs which have been carefully considered. Upon the entire record of the case and from my observation of witnesses and their demeanor, I make the following:

### FINDINGS OF FACT

#### I. RESPONDENT'S BUSINESS

Respondent, a California corporation, is engaged in several locations within the State of California in the business of manufacture and retail and nonretail sale of ready mix concrete. Jurisdiction is not in issue. Respondent admits and I find and conclude that Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

[1] Unless otherwise indicated, all dates hereinafter are in 1980.

## II. THE UNION'S LABOR ORGANIZATION STATUS

Respondent admits and I find and conclude that the Union is a labor organization within the meaning of Section 2(5) of the Act.

## III. THE ALLEGED UNFAIR LABOR PRACTICES

### A. *Facts*[2]

Respondent's manufacturing operations consist of five separate facilities or batch plants in north central California: Gridley, Chico, Oroville, Yuba City, and Corning, California. The Gridley facility, which sits in the middle of the others, serves as Respondent's headquarters.[3] Each facility employs both truckdrivers and batch plant operators. Additionally, Respondent employs approximately six mechanics who are responsible for the repair and maintenance of various trucks as well as batch plant equipment throughout the entire system. With some rare exceptions, the mechanics are generally assigned to the Gridley facility and are then sent out to the other four plants on daily assignments.[4]

For some years prior to 1977, Respondent's truckdrivers and mechanics employed at the Gridley, Oroville, Yuba City, and Chico facilities have been represented in one overall bargaining unit. The collective-bargaining agreement in effect at the time the instant controversy arose was effective from May 1977 to April 30, 1980.[5]

In either late 1979 or early 1980,[6] Don Lovett, a supervisor directly under Gordon Mathews, Respondent's president, approached Callaway, a mechanic and the "informal" shop steward.[7] Lovett, after first stating that he viewed Callaway as the employees' union representative, asked what the men were going to ask for in the upcoming contract negotiations. Before Callaway had an opportunity to respond, Lovett stated that Respondent was going to stick to President Carter's guidelines and that Callaway should inform the rest of the employees of that fact.[8]

Two separate and distinct incidents involving Callaway occurred during February and apparently account for and form the basis of Respondent's subsequent treatment of Callaway. The first incident occurred while Callaway was working at the Chico facility. On this occasion, Callaway walked into the batchroom[9] where approximately six employees were present and already discussing the upcoming contract. Callaway was asked for his feelings and he responded that the men should seek parity with other similar employees in the area. Callaway added that although some of the employees at Oroville did not believe that they should seek that much, he suggested that the men work together as a group to get a good contract. Callaway, at some point, relayed Lovett's earlier message to the group regarding the guidelines.

A few days following this meeting, Bill Goggia, a supervisor at Chico, approached Leonard Healey, one of the Chico employees who had been present at the lunchtime meeting with Callaway. Goggia asked Healey if he would write a letter or a statement concerning what was said at the meeting. Goggia added that in asking for the statement, he was merely following the instructions of Al DeMuth, the assistant manager.[10] Healey answered that he would prefer not to prepare such a statement or letter, and the matter was then dropped.

The second February incident involved a conversation between Callaway and Steve Landis, a loader-operator at Respondent's Oroville facility. Callaway informed Landis that Landis was receiving $1 an hour less than an employee performing the same function at the Yuba City facility. Callaway then suggested that Landis ask Respondent for a raise.[11] Then Mechanic Supervisor Tom Clark and Oroville's plant manager, Jim Seamon, were both in the area during the conversation and both may have been present during all or part of this conversation.

A few days later, Landis spoke to DeMuth at Oroville and asked about the wage differential. DeMuth answered that he thought it was true that a Yuba City operator was receiving more than he and that DeMuth would get back to Landis. Sometime later, DeMuth in the presence of Seamon informed Landis that he would get $1 an hour raise. DeMuth then asked if Callaway had told him about the wage differential. When Landis answered that

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[2] The material facts are not in dispute. In support of the complaint, the General Counsel called 10 employee and former employee witnesses. Although Respondent did not call any witnesses, it did introduce documentary evidence relating to overtime assignments of mechanics and the increased output at the Corning facility during 1980. The above account is based on the uncontradicted, and in many respects corroborative, testimony of the General Counsel's witnesses, whom I found to be generally trustworthy. In crediting their testimony, which was adverse to Respondent, I note that many of these witnesses are still employed by Respondent. In these circumstances, it is unlikely that their testimony would be false. See *Georgia Rug Mill*, 131 NLRB 1304, 1305 (1961), modified in other grounds 308 F.2d 89 (5th Cir. 1962).

[3] The Oroville facility is located approximately 14 miles northeast of Gridley; the Chico facility approximately 35 miles north of Gridley; Yuba City facility approximately 20 miles south of Gridley; and Corning approximately 70 miles northwest of Gridley.

[4] One of the exceptions to this practice was Callaway's transfer in May to the Corning facility. This assignment will be discussed in detail below.

[5] Sometime prior to May 1979, Respondent built and/or acquired the Corning facility. In late May 1979, Respondent and the Union executed a separate collective-bargaining agreement covering the Corning employees employed as truckdrivers, batch operators, and mechanics. This agreement, like the contract covering the other four facilities, expired on April 30.

On May 16, Respondent and the Union executed new 3-year collective- bargaining agreements in the two separate bargaining units discussed above.

[6] Although Callaway originally testified that this conversation occurred in late November, Callaway later in his testimony stated that it occurred in either late 1979 or early 1980. In view of Callaway's February discussions with employees regarding this conversation, it appears likely that it in fact occurred during the early portion of 1980.

[7] Callaway's status as informal union steward was apparently acknowledged as fact by all concerned.

[8] Callaway testified that in March Supervisors DeMuth and Seamon informed him that they had just spoken to Lovett who denied that he had ever talked to Callaway about the upcoming contract negotiations. Callaway was then instructed that he was no longer to be Lovett's spokesman.

[9] Apparently an area where employees customarily ate their lunch.

[10] While DeMuth was at all times an admitted supervisor of Respondent, it is not clear prior to April precisely what his title or responsibilities were. It appears that at all times he worked out of the Gridley facility. In April, DeMuth was given the responsibility for the ultimate supervision of the mechanics.

[11] As noted earlier, this job classification was not covered by the collective-bargaining agreement.

he had, DeMuth asked Landis if he would be willing to make a written statement saying that. DeMuth added that Callaway was causing the Company trouble and they needed a written example. Landis answered that he would prepare the statement. A day or two later, Landis called DeMuth and informed him that he had changed his mind and would not make the written statement. DeMuth simply said, "okay," and the matter was dropped for the time being.

A few weeks later, Landis received a paycheck showing that he had in fact been given a 50-cent-an-hour raise. Landis called Seamon who said he would check into it. A short time later, Seamon called Landis back and said that that was all he could do and that he (Landis) could thank Callaway for it.

That same day Seamon spoke to Callaway about Landis' raise. Seamon told Callaway that Landis had Callaway to thank for getting only half of the promised raise.

During June, Seamon approached Landis and informed him that the National Labor Relations Board wanted him to make a written statement concerning his conversations with Callaway about his raise. Landis prepared such a statement and gave it to Seamon.

Immediately following these February incidents, Callaway was "grounded" or restricted to the Gridley facility.[12] These restrictions lasted until Callaway was transferred on May 13 on a permanent basis to Corning. Tom Clark, the then immediate supervisor of the mechanics, on several occasions informed both Callaway and the other employees that DeMuth had ordered the "grounding" because Callaway was causing union problems.

In assigning overtime to mechanics, Respondent followed a well-established practice of making such assignment wherever practical upon seniority.[13] Callaway was the most senior mechanic in Respondent's employ. The General Counsel contends that during the period Callaway was grounded Respondent deviated from this practice and denied Callaway the opportunity to take numerous overtime assignments both at the Gridley facility as well as at the other facilities. In support of these contentions, the General Counsel relies primarily on the testimony of Callaway. While Callaway's testimony is not contradicted, it is, unfortunately, vague and lacking in details.

In this regard, Callaway testified that on several occasions between mid-February and mid-April batch belts broke at the Gridley facility which required overtime work by a mechanic. On those occasions, Respondent sent Callaway home after the completion of his 8-hour shift and instead assigned a junior mechanic to work overtime. Callaway stated that he filled out a timecard when he lost this overtime and also filed a grievance with the Union.[14]

In April, Callaway was called into a meeting with DeMuth, Gordon Mathews, Al Azevedo, who by then had replaced Tom Clark as the supervisor of the mechanics, and Tom Sanford, Respondent's attorney. At the meeting, Mathews stated that he could not allow Callaway to be filling out timecards for overtime not worked and, if Callaway continued to do so, he would receive a pink slip (warning notice).

Callaway responded by arguing that overtime assignments were not being made strictly by seniority. Callaway then mentioned that fellow mechanic Richard Watson had submitted a similar timecard for work he had been denied and that Watson had in fact been paid for those hours.[15] Respondent's officials indicated that they were not aware of Watson's actions and they then called Watson into the meeting. Watson confirmed the facts and was then dismissed. As Watson was leaving, he heard DeMuth state to Mathews, "Clark again." The group then continued for a short time thereafter to discuss overtime. Callaway never received payment for any overtime he felt he had been denied.

Callaway further testified to three other specific instances where he felt he had been denied overtime. This entire testimony consists of the following questions and answers:

> Q. (By Mr. Jemison) Okay. Now, were there occasions where you would fave received more overtime than you actually received had you been allowed to leave the Gridley facility; and; if so, can you give us examples?
>
> A. Yes, I can give you examples.
>
> Q. Would you do so?
>
> A. On one occasion when Larry Taber was sent to Corning, which it was known it would be about ten hours of work, and I requested to go and I was denied that request.
>
> On another occasion, Larry Taber was sent to Oroville and it was late in the afternoon when it was known there would be overtime and I was denied that request.
>
> Another occasion Gerald Pounds went to Oroville and done some work on a truck and also it was overtime involved and I was denied that request.
>
> Plus the time at the plant in Gridley which is already on testimony when the batch belt broke.
>
> Q. So it's your testimony that there was other overtime that you could have received, even maybe days that you worked overtime had you been allowed to leave the facility?
>
> A. Yes.

In defense of this allegation, Respondent introduced records showing by workweek the number of overtime hours worked by each of the six mechanics. These re-

[12] As noted earlier, mechanics customarily reported to the Gridley facility where they were then dispatched to one or more of the other facilities.

[13] According to Callaway's understanding of the practice, if another more junior mechanic was closer to the overtime work and it was more economical for the Company to use the junior mechanic, he was sent. However, if the overtime required a mechanic to be sent from the plant, the most senior mechanic available was asked first. The collective-bargaining agreement is silent on the subject of overtime assignments.

[14] The record does not disclose the identity of the junior mechanic given the work. Further, it is not clear from the record whether Callaway filed more than one timecard and grievance. Copies of the timecards and/or grievances were not offered at hearing.

[15] Watson's testimony corroborates that of Callaway's.

cords indicate that, in most of the weeks both prior to and during Callaway's grounding, Callaway generally worked at least as much as, if not more than, any other mechanic. Notwithstanding this factor, it is impossible to determine solely from a review of this chart that Callaway did not indeed lose overtime work to which he was entitled. For example, during the week of February 3, Callaway worked 11 hours' overtime while Watson worked 16-1/2, and Taber, the most junior mechanic, worked 11-1/2 hours' overtime. Further, for the week of March 9, Callaway worked 5 hours' overtime, Watson 6-1/2 hours, and Gene George, the next to the most junior mechanic, worked 5 hours. Similar comparisons are available for the weeks of March 23 and 30 and April 13.

On or about May 12, Callaway was informed by Mechanic Supervisor Azevedo that he was being transferred to the Corning facility.[16] Callaway asked Azevedo if he would be paid mileage for the daily round trip of approximately 120 miles. Azevedo answered that Callaway would have to go at his own expense and on his own time.[17]

That same evening, Callaway received a telephone call at home from Gary Huddleston, the plant manager at Corning. Huddleston stated that he had received a telephone call from Mathews and DeMuth, and was instructed to call them immediately if Callaway had not reported to work by 7 a.m. the following morning and to send Callaway home if he arrived late.[18]

Mechanic Watson testified that in the spring he was assigned to the Corning facility to relieve Callaway.[19] During a lunch break that week Watson and some of the other employees asked Huddleston about the fact that Callaway was forced to drive to Corning every day without receiving remuneration for mileage and time. Huddleston answered that, because Callaway was making "union troubles," they were making an example of him.

In late July or early August, mechanic Lawrence Taber was assigned to Corning to replace Callaway who was then on vacation. When this assignment was made, Azevedo stated to Taber that, while he could not pay Taber mileage and Taber would have to make the trip on his own time,[20] Taber, in order to defray his expense, should put in a couple hours' overtime every day, even if overtime work was not necessary.[21]

Timmy Drews, a batch operator and dispatcher at the Corning facility, testified that at some time after Callaway had been assigned to Corning, DeMuth called him and instructed Drews that he was not to allow Callaway in the office for any reason and that Callaway was only permitted to use the telephone when calling DeMuth, Azevedo, or Mathews.[22] During the same conversation, Drews asked DeMuth how long Callaway would be assigned to Corning. DeMuth replied simply that Callaway would be there "until either he quit or other arrangements were made."

Vern Jackson, a mixer driver employed at the Corning facility, testified that Huddleston instructed him not to talk to Callaway. No similar instructions were given regarding any other employee.

Respondent, in defense of the allegation that Callaway was assigned to the Corning facility for unlawful reasons, points out that the production records clearly establish that there was substantial increase in output of concrete at that facility from May on and that the increase required the permanent assignment of a mechanic. Like the overtime records discussed above, these production records are inclusive on the complaint allegation before me. While they do show a dramatic increase in production commencing in mid-May and lasting for the most part until mid-August, they in no way shed any light on the specific question of why Callaway, the most senior mechanic, was selected for this assignment.

### B. *Analysis and Conclusion*

The Board in *Wright Line, a Division of Wright Line, Inc.*, 251 NLRB 1083 (1980), set forth the applicable test in all cases alleging violations of Section 8(a)(3) and (1) which turn on employer's motivation. First, the General Counsel is required to make a *prima facie* showing sufficient to support the inference that the protected conduct was a "motivating factor" in the employer's decision. Once this is established, the burden shifts to the employer to demonstrate that the same action would have taken place even in the absence of the protected conduct.

Here, the General Counsel alleges that Respondent, in retaliation for Callaway's union and/or otherwise protected concerted activities, embarked on an unlawful campaign aimed at both punishing Callaway for his conduct, as well as dissipating, if not totally eliminating, Callaway's influence with his coworkers. A review of the entire record, including the various admissions by supervisors regarding Respondent's basis for its actions, not only merely convinces me, but also in fact compels me to reach the conclusion that the General Counsel has indeed made out an extremely strong *prima facie* case. Respondent presented little, if any, evidence even tend-

[16] As set forth above, it was extremely unusual, although not unprecedented, for a mechanic to be assigned on a permanent or semipermanent basis to a facility other than Gridley. In fact, Callaway himself had been previously assigned to Corning for an unspecified period after Respondent first acquired the property.

[17] Prior to this assignment, Callaway, as with most of the other mechanics, had the use of the company pickup truck for trips to Corning. On the occasions prior to February when Callaway was assigned to Corning on a daily basis, he was "on the clock" during the trip to and from his home.

[18] Callaway testified that he normally reported to work 10 to 15 minutes early and that he had never been reprimanded or warned regarding tardiness.

[19] The documentary evidence indicates that Callaway was on vacation during the week of May 25.

[20] By memorandum dated April 25, Respondent changed its transit policy to require, *inter alia*, that personnel who were directed to commence their workday at a given plantsite must get to that site on their own time at their own expense.

[21] Respondent's overtime records show that Callaway was on vacation the weeks of July 27 and August 3. During those 2 weeks, Taber worked 9 and 6 hours' overtime, respectively. During the entire time from May 13 through the time he went on this vacation, Callaway worked only 16-1/2 hours' overtime at Corning, with 9 of those hours coming in 1 workweek.

[22] These restrictions were applicable only to Callaway.

ing to demonstrate that any of its actions would have taken place in the absence of Callaway's protected conduct.

In February, Callaway, while at the Chico facility, urged his fellow represented employees to work together to demand higher wages in the upcoming contract negotiations. Callaway took this action with the full knowledge that Respondent strongly opposed any increase that exceeded the President's wage guidelines. A short time following this Chico meeting, Supervisor Giggia, on the orders of Assistant Manager DeMuth, requested that an employee furnish Respondent with a written statement of what was said at the meeting. Clearly, such a request constitutes a coercive interrogation of its employees' union activities, and Respondent is not relieved or absolved of any liability for such conduct by virtue of the fact that the request was not accompanied by any threats.[23]

A second event occurred during February which added to Respondent's already existing resentment of Callaway. Callaway informed nonunit employee Landis that he was not receiving the same wage rate as another nonunit employee employed in the same classification at another facility. Callaway then suggested that Landis request a raise to bring his salary in line with the other employees. When Landis requested the raise, DeMuth asked if Callaway had told him of the wage differential. DeMuth then stated that Callaway was causing Respondent trouble and asked Landis for a written statement. As was the case with Healey above, DeMuth's discussions with Landis constituted unlawful interrogation of employees' protected concerted activities.[24]

Respondent's reaction to Callaway's conduct was swift and blatant. In short order, it "grounded" Callaway with the result that it not only prevented him from communicating with employees at the four other facilities, but also kept him stationed at headquarters under the watchful eyes of Respondent's officials. Apparently not satisfied with merely denying Callaway the opportunity to associate with his coworkers, Respondent affirmatively sought to punish him for his past transgressions. Respondent deviated from its established practice of assigning overtime on the basis of seniority and instead assigned overtime on several occasions to junior employees.[25]

In the mid-April meeting with Respondent's management, Callaway was reprimanded regarding the filing of timecards for overtime not worked. The General Counsel alleges that this warning violated Section 8(a)(1). As noted earlier, the record regarding the procedure Callaway followed in disputing overtime assignments is less than clear. It appears that Respondent was not, as contended by the General Counsel, warning Callaway over filing grievances, but was merely warning him regarding the method he followed. In these circumstances, I find that Respondent's conduct does not amount to an unlawful threat.

Respondent in its communication with employees made no secret of the basis for its actions against Callaway. Mechanic Supervisor Clark informed several employees, including Callaway, that Respondent restricted Callaway to the Gridley facility because he was causing "union problems." Respondent further informed first Landis and then Callaway himself that, because of Callaway's role in the Landis affair, Landis was receiving only half of his promised raise. Each of these conversations constitutes unlawful threats in violation of Section 8(a)(1).

On May 12, Respondent transferred Callaway to Corning, the most remote facility within Respondent's five-plant system.[26] Respondent contends that the substantial increase in the production output at the Corning facility, which commenced in May, warranted the permanent assignment there of a mechanic. While this may well be the case, Respondent offered no evidence explaining why Callaway, the most senior mechanic, was selected for this assignment. Once again, the statements and actions of the various supervisors remove any reasonable doubt on the question of why Callaway was indeed selected.

On the evening Callaway received the assignment, Huddleston called him and warned him that DeMuth and Mathews would take immediate action if he reported for work late on the following morning. This warning was given despite the fact that Callaway had never previously received a warning or reprimand for being tardy and in fact had a practice of normally reporting 10 to 15 minutes early for work.

Respondent, during the month prior to Callaway's transfer to Corning, changed its policy regarding both the use of the company vehicles and/or compensation for the employees' use of private vehicles, as well as its policy on compensation for travel time. The record evi-

[23] The complaint, as amended at hearing, alleges that this incident, as well as several others, constitutes unlawful creation of the impression of surveillance. I do not agree with this interpretation since the actions of Callaway were at all times open and notorious with no attempt on the part of any employee to conduct union business in secret.

[24] Respondent contends that Callaway's conversation with Landis is not protected since Callaway was admittedly not acting in his official capacity as union steward and that Landis was not a member of the Union. This contention, of course, totally ignores the concept of protected concerted activity as distinct from union activity. On the question of whether Callaway's first informing Landis that he was not receiving the same wage as a comparable employee and then suggesting that Landis request a raise constitutes protected concerted action, I find the Board's decision in *Richard M. Brown, D. O. and Donald R. Janower, D. O., a Co-Partnership d/b/a Park General Clinic*, 218 NLRB 540, 546–547 (1975), enfd. 546 F.2d 690 (1976), as analogous. There, the Board affirmed without comment the Administrative Law Judge's conclusion that an employee and a coworker who joined the employee in meeting with the employer solely to discuss the employee's wage rate were engaged in protected concerted activity. See also *Hotel and Restaurant Employees and Bartenders Union, affiliated with Hotel and Restaurant Employees and Bartenders International Union, AFL-CIO*, 252 NLRB 1124, fn. 2 (1980). In any event, based on the statements of supervisors, it is abundantly clear that Respondent's overriding concern was isolating Callaway and thereby diminishing his effectiveness in rallying the other employees into seeking a substantial raise in the upcoming negotiations. Respondent merely used this incident with Landis as a possible justification for its unlawful actions.

[25] The fact that the record does not disclose with certainty both the dates and the amounts of the overtime Callaway lost while "grounded" does not constitute a barrier to reaching the obvious conclusion that Callaway was in fact unlawfully denied overtime. I leave for the compliance stage resolution of the question of how much overtime Callaway lost.

[26] As set forth above, not only was the Corning facility located some 70 miles from Gridley, it was also the one facility that had its own collective-bargaining agreement.

dence establishes that Respondent applied this new policy in a disparate manner, at least regarding the assignment of mechanics to Corning. In this regard, Callaway was not compensated for time or expense in his daily trips to and from Corning. Yet, when another employee was assigned to relieve Callaway while on vacation, he was expressly authorized to put in 2 hours' overtime each day whether or not work existed in order to compensate him for his expenses in travel. Callaway was offered no such similar opportunity.

Respondent further placed restrictions on Callaway even when at the Corning facility. Employees were told not to associate with him and he was specifically prohibited from using the telephone except when speaking to one of Respondent's managers. This restriction was not applicable to any other employee.

Respondent's purposes for transferring Callaway were clear. Huddleston informed employee Watson that Callaway was transferred because he was making "union troubles," and Respondent was making an example of him. DeMuth, in a conversation with employee Drews, explained further when he stated that Callaway would be assigned to Corning "until either he quit or other arrangements were made." These statements, like Supervisor Clark's earlier ones, not only established the purpose behind Respondent's conduct, but also constituted unlawful coercive threats to other employees should they also wish to cause Respondent problems by making "union troubles."

Finally, the complaint alleges that Respondent further violated Section 8(a)(1) when Supervisor Seamon instructed employee Landis that the National Labor Relations Board wanted Landis to prepare a written statement concerning Callaway's conversation with him about his wage rate. The evidence does not establish that Landis was informed of the purpose of the request,[27] was assured that no reprisals would take place against him, and/or that his participation was on a voluntary basis. *Johnnie's Poultry Co. and John Bishop Poultry Co., Successor*, 146 NLRB 770, 775 (1964). Clearly, Seamon's request did not meet these requirements.

### III. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section II, above, occurring in connection with Respondent's operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and and obstructing commerce and the free flow of commerce.

### IV. THE REMEDY

Having found that Respondent has engaged in unfair labor practices, it will be recommended that Respondent cease and desist therefrom and take certain affirmative action to effectuate the policies of the Act.

[27] If in fact the Board agent conducting the investigation of the unfair labor practice had even informed Respondent that he wished to have Landis prepare such a statement.

Having found that Respondent discriminatorily denied William Callaway the opportunity to work overtime while employed at the Gridley facility during the period of mid-February to on or about May 12, transferred Callaway from the Gridley facility to the Corning plant on or about May 13, and further refused to allow Callaway to work 2 hours' overtime on a daily basis to compensate him for travel expenses, it is recommended that Respondent immediately transfer Callaway from the Corning facility to the Gridley facility. It is further recommended that Respondent make Callaway whole for any loss of earnings, including overtime, from mid-February 1980 to the date he is transferred back to the Gridley facility with such earnings to be computed within the meaning and in accordance with the Board's Decisions in *F. W. Woolworth Company*, 90 NLRB 289 (1950), and *Florida Steel Corporation*, 231 NLRB 651 (1977).[28]

Upon the basis of the above findings of fact and upon the entire record in this case, I make the following:

### CONCLUSIONS OF LAW

1. Mathews Ready Mix, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. General Teamsters Local No. 137, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

3. By discriminatorily denying William Callaway the opportunity to work overtime from mid-February to mid-May while employed at the Gridley facility, Respondent violated Section 8(a)(3) and (1) of the Act.

4. By transferring Callaway on or about May 13 from the Gridley facility to the Corning facility because of Callaway's union and other protected concerted activities, Respondent violated Section 8(a)(3) and (1) of the Act.

5. By refusing in a disparate fashion to permit Callaway to work 2 hours' overtime daily while assigned to the Corning facility in order to compensate him for travel expenses, Respondent violated Section 8(a)(3) and (1) of the Act.

6. By interrogating employees concerning their union and other protected concerted activities, Respondent violated Section 8(a)(1) of the Act.

7. By requesting employees to furnish the National Labor Relations Board with written statements concerning its employees' protected concerted activities, Respondent violated Section 8(a)(1) of the Act.

8. By informing employees that Respondent denied overtime opportunities to Callaway, transferred Callaway to the Corning facility, and disparately refused to permit Callaway to work overtime to compensate for his travel expenses, Respondent violated Section 8(a)(1) of the Act.

9. Respondent did not violate the Act by any other conduct as alleged in the complaint, as amended at the hearing.

[28] See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

Upon the foregoing findings of fact, conclusions of law, and the entire record in this proceeding, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

## ORDER[29]

The Respondent, Mathews Ready Mix, Inc., Gridley, California, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Denying its employees the opportunity to work overtime because of the employees' union and other protected concerted activities.

(b) Transferring its employees from one facility to another because of the employees' union and other protected concerted activities.

(c) Interrogating its employees concerning their union activities, sympathies, and desires.

(d) Requesting its employees to furnish the National Labor Relations Board with written statements concerning the protected concerted activities of fellow employees.

(e) Informing its employees that Respondent denied overtime and transferred employees from one facility to another because of the employees' union and other protected concerted activities.

(f) Restricting its employees in their access to the office and the telephone because of their union and other protected concerted activities.

(g) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action which I find will effectuate the policies of the Act:

(a) Transfer William Callaway from the Corning facility to his former job at the Gridley facility or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges.

(b) Make whole William Callaway for any loss of earnings, including overtime, suffered as a result of the discrimination against him in the manner set forth in the section of this Decision entitled "The Remedy."

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security records, timecards, personnel records, and reports and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its Gridley, Yuba City, Oroville, Chico, and Corning, California, facilities copies of the attached notice marked "Appendix."[30] Copies of said notice, on forms provided by the Regional Director for Region 20, after being duly signed by Respondent's authorized representative, shall be posted by it immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for Region 20, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

[29] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[30] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."